

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 1984.02  
COMPLAINT INVESTIGATOR: Susan Remlinger  
DATE OF COMPLAINT: December 16, 2002  
DATE OF REPORT: March 21, 2003  
REQUEST FOR RECONSIDERATION: yes  
DATE OF CLOSURE: June 6, 2003

**COMPLAINT ISSUES:**

Whether the Kokomo-Center Township Consolidated School Corporation and the Kokomo Area Special Education Cooperative violated:

511 IAC 7-27-2(d)(3) by failing to include on the notice of a case conference committee (CCC) meeting a list by name and title or position of other expected participants.

511 IAC 7-27-3(f) by failing to allow, at the discretion of the Parent, another individual who may have special knowledge of the student to participate in a case conference committee meeting.

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee meeting at the request of the Parent.

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP) as written.

The response to the request for reconsideration was originally due on February 21, 2003. On that date, the Associate Superintendent granted an extension for the response to March 21, 2003.

**FINDINGS OF FACT:**

1. The student (Student) is 10 years old, in the fourth grade, and is eligible for fulltime special education and related services as a student with an emotional disability.
2. The CCC met on December 13, 2002, to review/revise the Student's IEP, first developed on April 29, 2002. There have been subsequent case conferences on December 18, 2002, and January 7, 2003. The Parent signed as agreeing to the revised IEP on January 7, 2003.
3. The School's notice of case conference form has a place where the School lists the names and titles of who the School "anticipates [to be on the CCC]" and a statement that "others may be included as the need arises":
  - a. On the December 9, 2002, notice for the December 13, 2002, case conference the School listed six names and included the title of each. At the December 13 case conference two school staff members were introduced as participants on the CCC, but were not listed on the December 9 notice.

- b. The December 13, 2002, notice completed at the December 13 case conference was prepared by the Complainant's advocate and failed to include the titles of two of the school personnel in attendance. The Complainant and advocate completed a notice form at the Complainant's request.
- c. On the December 16, 2002, notice for the December 18, 2002, case conference the School listed eight names, including titles for each.
- d. On the January 6, 2003, notice for the January 7, 2003, case conference the School listed nine names, but only seven names included titles.
4. The *Prior Written Notification of Case Conference/Annual Case Review Meeting* provides the following instructions to the parent: "Please complete this page, sign, and return it to the school prior to the case conference." In the section for the parent to complete, the School's notice of case conference form also has a statement that the Parent "may bring additional persons to the meeting" and then a place for the Parent to "please list the name(s) and titles of the person(s) you will be bringing." As participants were gathering to begin the December 13 case conference, the Parent introduced someone, not listed on the December 9 notice, as "a friend and IN\*SOURCE advocate in training." A teacher then contacted the Coordinator, who was running late for this conference, to announce the presence of an advocate so that the Coordinator could attempt to bring in a special education cooperative-level administrator. Such an administrator was not available, so when the Coordinator arrived, the case conference was terminated. The Coordinator gave a verbal and written explanation, which the Parent signed as receiving at the case conference, about why the case conference was stopped. The written explanation did not state that the parent's invited participant was not allowed to attend a case conference, just that the title of the participant was not known in advance.
5. The School has a practice, not a written policy, based on a recommendation made to the Director by the special education cooperative's Superintendents on August 23, 2001, that there "must always be a cooperative-level administrator at any case conferences where advocates will be attending". The December 13 case conference was stopped when such an administrator was not available. There is no evidence that the Parent specifically asked the conference to continue and was denied.
6. The Complainant alleges that the April 29, 2002, IEP is not being implemented regarding the behavior intervention plan (BIP). The Student is allegedly being restrained for vomiting. A functional behavior assessment (FBA) was completed April 22, 2002, and the BIP was developed at the April 29, 2002 case conference. The BIP indicates 4-6 behaviors as being "problems that result in the need for a behavioral plan." Vomiting is not listed as one of the behaviors and restraint is not listed as an intervention for any problems listed in the BIP. There is documentation in the teacher/parent log of several instances of "restraint" or "holding" due to non-compliance and distracting other students, but no further details about the intensity of the restraint or hold. There is no record of the Student being restrained for vomiting. The Complainant reported requesting the December 13 conference specifically to address behavior and to request the School cease using restraint. The December 9 notice indicates "IEP review" and "parent request" as the purposes of the case conference. However, the notes from the December 18, 2002, case conference committee meeting (rescheduled from December 13, 2002) indicate a discussion of the school's use of restraint when the Student is "running around" or "is threatening to others." The notes further indicate an agreement that "no physical restraint will be used" in the future. There is no documentation that either the FBA or the BIP has been revised since April 29; however, the April 29, 2002, IEP was reviewed on December 18, 2002, and there is a handwritten note across the first page of the April 29 IEP stating "no physical restraint allowed effective 12-18-02." There is no documentation that the school has failed to implement the other strategies identified in the Student's BIP.

7. The Complainant alleges that the IEP is not being implemented regarding “services” and the IEP having “NAs and NPs”, which stand respectively for “not applicable, objective not yet covered” and “no progress, no gains or improvement” next to objectives/benchmarks. The objective/benchmark just prior to the objective/benchmark with the “NAs” states the skill will be acquired “...by the end of the 1<sup>st</sup> semester.” First semester had not ended at the time of this complaint. The objective/benchmark with the “NAs” states “...by 4/30/03”, the duration date of the IEP. Progress on the IEP goals, using the codes for amount of progress for each objective/benchmark, is documented as being reported on June 6, 2002, October 3, 2002, November 13, 2002, and January 8, 2003. By the last review date of January 8, documentation of progress for the objective with the “NAs” was changed to indicate progress.

## CONCLUSIONS:

1. Finding of Fact #3 indicates that the three notices of case conference meeting do not consistently include the title for each of the School's anticipated participants. Therefore, a violation of 511 IAC 7-27-2(d)(3) is found.
2. Finding of Fact #4 indicates that the Parent is expected to reply to a notice of case conference and include the name and title of any participant(s) they are bringing. There is no clear statement on the notice that providing the names and titles is strictly optional. Finding of Fact #5 indicates that when an advocate attends a case conference without being indicated as such on a notice, the conference will be paused in order for the School to attempt to add another participant of their choosing, and stopped if there is no such administrator available. While the December 13 case conference was terminated, the documentation does not indicate that there any instances when an advocate is prevented from attending a case conference. Therefore, no violation of 511 IAC 7-27-3(f) is found. While the school did not preclude the advocate from attending the case conference committee meeting, the implication that the parent must list the names and titles of any individual accompanying the parent to the case conference committee meeting and the school's practice of terminating a case conference committee meeting when the parent failed to provide the information and no cooperative-level administrator is available to attend the case conference does not satisfy the requirements of Article 7. As such, corrective action is warranted to address this problem.
3. Finding of Fact #5 indicates that while the December 13 case conference was stopped because the School's desired participant could not attend, there is no documentation that the parent specifically requested that the case conference continue. There also is no documentation that the parent has specifically requested another case conference since December 13 that was denied, and there have been two case conferences conducted since December 13. Therefore, no violation of 511 IAC 7-27-4(a)(3) is found.
4. The Complainant alleges that school personnel physically restrained the Student for vomiting, contrary to the BIP, included in the Student's April 29, 2002, IEP. Finding of Fact #6 indicates that the BIP neither requires nor precludes the use of restraint, nor does it address vomiting as a targeted behavior. Finding of Fact #6 indicates that, due to the communication log being used by the parent and the school, the Parent was aware that the school was using physical restraint in certain circumstances. There is no documentation of the student vomiting or of the Student being restrained for this behavior. When the Parent requested the school discontinue the use of physical restraint, the school complied with the Parent's request. There is no documentation that the interventions in the existing BIP/IEP have not been implemented or that precluded interventions have been utilized. Therefore no violation of 511 IAC 7-27-7(a) found with regard to the BIP.
5. Finding of Fact #7 indicates that the objective/benchmark with the “NAs” was not projected to be accomplished until the end of first semester, which had not occurred at the time of the complaint, by which has been worked on since, with progress reported January 8, 2003. The amount of progress was recorded

for each reporting period about each goal according to the time frame in which each objective was projected to be worked on. Therefore, no violation of 511 IAC 7-27-7(a) is found with respect to the implementation of the objectives/benchmarks identified in the Student's IEP.

## **DISCUSSION:**

The statement on the School's notice of case conference form that a Parent "please list the name(s) and titles of the person(s) you will be bringing" when coupled with the instruction to the parent to "complete [the] page, sign, and return it to the school" implies that a Parent must list such information. This statement is unrelated to the requirement of the School to list names and titles of anticipated participants. Since it is not stated on the notice form that such information is strictly optional, and because the School's practice is to terminate a case conference if an advocate arrives without prior notice and no cooperative-level administrator is available to join the case conference committee meeting, this requirement fails to satisfy the requirements of Article 7. When a parent has made arrangements to interrupt home- or work-life to attend a case conference, the School must fully attempt to complete the required activities of a case conference committee. There may be legitimate reasons for either the School or the Parent to pause or terminate a case conference, and there are numerous ways to work successfully through difficult case conferences. But there cannot be an established practice of singling out a particular type of participant as being the cause for terminating case conferences.

**The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTION:**

Kokomo Area Special Education Cooperative shall:

- 1 a. Cease immediately the practice of terminating a case conference when an advocate arrives without the School's prior notice. Revise the notice of case conference form to either remove the statement regarding names and titles for Parent's participants, or clearly indicate that the inclusion of names and titles is strictly optional. Upon revision of the form, retrain all special education staff, principals, and members of the Advisory Board about the requirement of 511 IAC 7-27-3(f). A copy of the revised notice of case conference form shall be sent to the Division no later than February 28, 2003. A description of the method of retraining, and a list of the staff who were retrained, shall be sent to the Division no later than April 25, 2003.
  - b. Immediately send a written reminder to all special education staff and principals instructing them that until the form is revised they must write on any notice they send the word "optional" next to the sentence "If you intend to have someone..." A copy of the written reminder and an assurance statement indicating to whom the reminder was sent shall be sent to the Division no later than April 11, 2003.
  - c. Include in the above written reminder the requirement in 511 IAC 7-27-2(d)(3) to document on each notice of case conference the name and full title of each anticipated School participant.
2. The corrective action previously identified in this paragraph has been rescinded

3. The corrective action previously identified in this paragraph has been rescinded.